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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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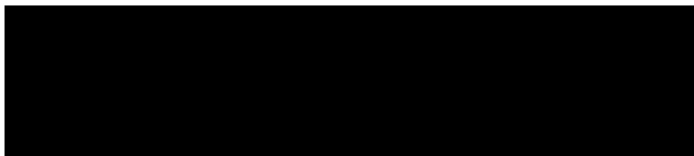
FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a business information technology consulting company, states that it is a subsidiary of the beneficiary's foreign employer, [REDACTED]. The petitioner has employed the beneficiary in L-1A status since March 2006 and seeks to extend his status for approximately 16 months so that he may serve in the position of Program Manager.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that it appears that the decision failed to take into consideration the petitioner's response to the director's request for evidence. Counsel asserts that the evidence of record demonstrates that the beneficiary qualifies for an extension of his status based on his management of 29 professional employees and his management of a customer program involving multiple projects worth in excess of \$22 million in contract value. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The sole issue in this matter is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a *primarily managerial capacity*. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The petitioner filed the nonimmigrant petition on February 13, 2009. In a letter dated February 10, 2009, the petitioner indicated that the beneficiary was previously granted L-1A status to serve as a QA Project Manager for a client based in Rockville, Maryland, and is now being offered the role of Program Manager for the petitioner's client, [REDACTED], based in Washington, DC. The petitioner indicated that it has 30 employees dedicated to the four projects under the beneficiary's supervision, and stated that the projects have a contract value of \$22,739,856. The petitioner provided a lengthy description of the beneficiary's proposed duties. Briefly, the petitioner indicated that the beneficiary's duties include identifying and hiring resources for each project based on reports from subordinate project managers; reviewing project progress; resolving escalated and prioritized issues; providing managerial direction to the ISP team by creating and publishing project metrics and monthly status reports for customer review; conducting performance appraisals; and communicating project achievements to the customer.

The petitioner stated that the beneficiary "will also be an integral component" in determining the projects' success through supervision of subordinates, and will directly supervise and control thirty subordinates, including four project managers, 25 analyst programmers and a web administrator. The petitioner indicated that all of the beneficiary's subordinates possess a minimum of a Bachelor's degree in a related field and relevant IT experience.

The petitioner provided an organizational chart depicting the structure of the beneficiary's assigned projects. The beneficiary reports to a Business Relationship Manager, and oversees four project managers, each of which is responsible for a different project. Each project manager supervises five to eight analyst programmers, and the beneficiary also supervises a web administrator.

On February 24, 2009, the director issued a request for additional evidence (RFE). The director instructed the petitioner to provide additional information regarding the beneficiary's duties, and the management and personnel structure of the U.S. entity, including information regarding the number of subordinate supervisors working under the beneficiary's management, their job titles and job duties, the amount of time the beneficiary devotes to managerial duties versus non-managerial duties, and the degree of discretionary authority the beneficiary has over day-to-day operations. The director noted that the beneficiary appears to manage projects within a department or subdivision of the organization, rather than managing the organization, or a department, subdivision, function or component of the organization. The director also observed that the petitioning company has filed a number of L-1A petitions which have been approved by USCIS, but questioned whether "a company the size and scope identified in the instant petition could reasonably support that many managers."

In a response dated April 8, 2009, the petitioner emphasized that the beneficiary will be responsible for managing four significant projects for a client account valued at \$6.3 million. The petitioner provided a detailed description of the beneficiary's duties and the percentage of time he will allocate to each area of responsibility. Briefly, the petitioner indicated that the beneficiary's time will be allocated as follows:

- Responsible for internal review of project progress with the customer (30%)
- Manage resource utilization (15%)
- Monitor team performance (5%)
- Train and mentor team (5%)
- Interact with onsite and offshore program management (10%)
- Ensure proper utilization of Human Resources. (5%)
- Maintain responsibility for establishing and building relationship with Bank Leads/Managers: Manage escalation of issues. (15%)
- Manage the schedule, cost and quality of the project: Review the program profitability; monitor quality trends and intervene as needed. (5%)
- Prepare and present program quality audits (5%)
- Maintain responsibility for program billing (5%)

The petitioner stated that the beneficiary will supervise four subordinate supervisors (project managers) whose duties include:

[L]iaising with the client; ensuring coding standards; conducting quality reviews; resolving queries and coordinating activities between offshore and the client; preparing standards and checklists; conducting user trainings; training, planning and monitoring and supporting team; reviewing functional specifications, technical design documents and program specifications; allocating and coordinating work; interfacing with business managers for high impact problems; approving and implementing project deliverables; approving impact analysis of small enhancements; identifying and executing re-engineering and process improvement initiatives; sharing best practices with management; and managing the quality of deliverables.

The petitioner further stated that the 25 analyst programmers will be: liaising with the client; conducting quality reviews, resolving queries; coordinating activities between offshore and client; reviewing functional specifications, technical design documents, and program specifications; fixing base functionality testing bugs; resolving production process problems; and onsite/offshore coordination.

The petitioner stated that "the beneficiary's job duties are primarily managerial in nature and involve providing leadership and direction to the different projects under his oversight as well as key project delivery skills." The petitioner stated that the beneficiary will spend "100% of his time devoted to managerial duties."

In response to the director's inquiry regarding the beneficiary's degree of discretionary decision making authority over day-to-day operations, the petitioner stated that the beneficiary will be authorized to hire and fire members from the program, appraise the performance of his subordinates, as well as manage program costs within an approved cost budget and hold discretionary authority over the program budget, including the authority to purchase resources for team members.

The director denied the petition on April 30, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial capacity under the extended petition. The director acknowledged the letter submitted in response to the RFE, but noted that the petitioner did not submit any documentary evidence to bolster its claims. The director observed that the proffered position appears to contain some managerial components, but determined that the petitioner did not establish that the beneficiary would be primarily engaged in managerial duties. The director determined that the petitioner's response to the request for evidence included only a "generalized breakdown" of the beneficiary's activities, and failed to include detailed position descriptions for the beneficiary's team members.

The director emphasized that, in order to establish the beneficiary's eligibility as a manager, the petitioner must demonstrate that he primarily manages the organization, or a department, subdivision, function or component of the organization. The director noted that the activities associated with managing a client project can be distinguished from controlling a function or component of the organization. In this regard, the director noted that "a Program Manager" for IT workers often performs the day-to-day tasks which support the workers he coordinates" and further noted that overseeing a client project can be distinguished from

managing a component or function of the organization. Finally, the director noted that the beneficiary will "manage a team that works on a specific client project, engaging in activities directly associated with producing a product or providing a service."

On appeal, counsel asserts that "the Service has either misinterpreted or failed to consider the facts in evidence," noting that the director erroneously stated that the petitioner did not provide a detailed job description. Counsel asserts that the beneficiary "plays an integral role in managing 4 important projects for a significant customer, the [REDACTED], and the success of these projects hinges upon the Beneficiary's ability to manage them."

Counsel further objects to the director's finding that the beneficiary would be performing the tasks necessary to produce a product or provide services. Counsel suggests that the director mischaracterizes the program manager position as an administrative position, responsible for providing support to the project's resources. Counsel notes that "a Program Manager spends most of his or her time reviewing reports prepared by Project Managers, assessing resource needs, budgeting costs, analyzing schedules, escalating issues that could not be resolved at a lower level, liaising with senior level customer representatives and reporting to senior management." Counsel further states that "program management requires the management of multiple professionals working on multiple projects" and emphasizes that the beneficiary has nine years of experience within the petitioner's organization which has resulted in his assignment to significant personnel and budget management responsibilities.

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a primarily managerial capacity. The director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by project managers or program managers for IT workers rather than on the evidence submitted by the petitioner. The director should not hold a petitioner to his undefined and unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a primarily managerial or executive capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

The evidence submitted establishes that the beneficiary supervises and controls the work of professional employees and possesses authority to recommend personnel actions for employees under his supervision. *See* sections 101(a)(44)(A)(ii) and (iii) of the Act.

Furthermore, the AAO concurs with the petitioner's assertion that the beneficiary's overall management of a group of on-site/off-shore projects for a single client, within the context of the facts presented in this matter, can be equated to managing a subdivision, function or component of the organization. *See* section 101(a)(44)(A)(i) of the Act. The client account for which the beneficiary is responsible generates significant revenue, and the beneficiary manages more than half of the workforce assigned to the account. Further, the beneficiary does not directly oversee such projects, but rather oversees subordinate project managers, who, in turn, supervise the technical resources. Finally, the AAO is satisfied that the beneficiary exercises discretion

over the day-to-day operations of projects under his responsibility, as required by section 101(a)(44)(A)(iv) of the Act.

While the beneficiary will undoubtedly be required to apply his technical expertise in carrying out his job duties and perform some administrative tasks, the AAO is persuaded that the vast majority of the day-to-day non-managerial tasks required to produce the products and provide services for the client are carried out by the beneficiary's subordinate project managers and technical staff. The petitioner need only establish that the beneficiary devotes more than half of his time to managerial duties. The petitioner has met that burden and the petition is approved.

The AAO notes that the beneficiary was initially admitted to the United States in H-1B status on March 22, 2003, and was subsequently granted a change of status to L-1A classification, and an extension of stay through March 5, 2009. The petitioner has requested that the beneficiary's L-1A status be extended until June 28, 2010, and provided documentary evidence of the beneficiary's absences from the United States since his initial date of admission. The petitioner indicates that the beneficiary is eligible to recapture 100 days during which he was physically present outside the United States. The AAO finds that the number of days the beneficiary is eligible to recapture is 92.<sup>1</sup> Therefore, the beneficiary is eligible for an extension of his L-1A status until June 20, 2010.

The regulation at 8 C.F.R. § 214.2(l)(12) provides, in relevant part, that an alien who has spent seven years in the United States in a managerial or executive capacity under section 101(a)(15)(L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15)(L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, the immediate prior year. Thus, the beneficiary is ineligible for any extension of his L-1A status beyond June 20, 2010, and no new L-1 or H petition filed on his behalf can be approved until and unless these conditions are met.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden. Accordingly, the director's decision dated March 9, 2009 is withdrawn.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The petitioner's calculations included days in which the beneficiary was traveling and spent a portion of his day physically present in the United States. The AAO's calculations include only full days on which the beneficiary was physically present outside the United States.